

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

In Re Application of:)	
)	
Stephen Gold)	Confirmation No. 2882
)	
Serial No.: 10/684,207)	Examiner: Dillon, Samuel A.
)	Group Art Unit: 2185
Filed: October 10, 2003)	
)	
For: Loading of Media)	HP Docket: 200309331-1
)	TKHR Docket: 50849-1560
)	

REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner of Patents and Trademarks
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

This brief is filed in reply to the Examiner's Answer, which was mailed January 26, 2009.

Response to Examiner's Answer

The rejection sections on pp. 3-11 of the Examiner's Answer appear to recapitulate the prior positions taken by the Examiner in the final Office Action. Applicants continue to disagree with the Examiner's positions as to all claim rejections under appeal, and Applicants' Appeal Brief sets forth, from a substantive basis, the reasons why the cited references do not properly teach the claimed features. Therefore, rather than restate or reiterate the rather lengthy bases and reasons why Applicants continue to disagree with the Examiner, Applicants repeat and re-allege herein the positions set forth in the Appeal Brief.

A fundamental point of disagreement relates to the claimed feature “order[ing] the list by physical location of the at least two backup devices based on proximity of the remaining backup devices of the at least two backup devices to the first backup device”.

In this Reply Brief, Applicants now address selected points introduced in the Response to Arguments section of the Examiner’s Answer (pp. 11-17), related to this feature.

Although Applicants asserts that independent claims are 1, 10, 13, 16, 19, and 23 are not coextensive in scope, Applicants discuss this feature in the context of a single representative (claim 1) in order to facilitate review.

The Examiner explains his interpretation of the claimed “ordering...based on proximity” feature as follows:

[The Examiner] asserts that a sort of said column is a sort based on proximity because the values being sorted are representative of proximity. Bolin’s locations are textual representations of the location of a cartridge, and sorting them would therefore be sorting based on said representation.

Bolin discloses displaying the home location of a cartridge, such as VLT17R1 (column 11 lines 1-7, figure 4). This textual representation is meant to imply that the cartridge’s home location is located in Vault 17 (VLT17) and on Rack 1 (R1). Therefore, either an ascending or descending sort would put all cartridges with home locations of Vault 17 and Rack 1 next to each other, because they have the same textual representation of their home location. Likewise, either an ascending or descending sort would put all cartridges with home locations of Vault 17 and Rack 1 (VLT17R1) either above or below those cartridges having a home location of Vault 14 and Rack 4 (VLT14R4, figure 5).
(Examiner’s Answer, pp. 11-12.)

Applicants agree that the combination discloses an alphanumeric sort on a text field that represents a cartridge’s location. However, Applicant’s disagree with the Examiner’s assertion that “the [location] values are *representative* of proximity”, and the resulting conclusion that sorting on location is therefore the same as sorting on proximity.

Applicants concede that an item's proximity is *related* to its location. In fact, the very notion of proximity is relative to a particular location. But such a relationship does not rise to the level such that a location *represents* proximity.

This relationship aspect of proximity is recited in the claims. Specifically, the claims do not merely recite "ordering...based on proximity", but instead recite "ordering... based on proximity of the remaining backup devices of the at least two backup devices to the first backup device". Thus, the proximity of each device is defined in relation to one particular device – the first backup device – where that first backup device is further described in the claim as being assigned a particular media. The Examiner has failed to appreciate this relationship aspect of proximity in his rejections. The sorting described by the Examiner in the passage quoted above is merely an alphanumeric sort by the cartridge location string, and is not relative to any specific device, as required by the plain language of the independent claims.

In addition, the example given by the Examiner – of how a sort on Bolin's location string amounts to a sort on proximity – actually demonstrates how location and proximity are different. As shown in FIG. 4 of Bolin, the cartridges in Bolin are stored in bins 33 within a vault 50, with bins are arranged in rows. The textual sort which the Examiner infers from *Bolin* does not distinguish between cartridges on the same row: all the cartridges on rack 1 (i.e., row 1) appear before all the cartridges on rack 2. But the rightmost cartridge on row 1 (referred to now as Rack1.4) is in fact farther away from the leftmost cartridge of row 1 (Rack1.1) than is the leftmost cartridge of row 2 (Rack2.1). Thus, a **true sort based on proximity** to the leftmost cartridge of row 1 must be ordered: Rack1.1, Rack2.1, Rack1.4. In contrast, the textual sort relied on by

the Examiner, which does not distinguish between cartridges on the same row, is ordered: Rack1.1, Rack1.N, Rack 2.1. Thus, the combination of *Bolin* with *Jennings* cannot properly be considered be a sort based on proximity as recited in each of the independent claims.

In summary, Applicants and the Examiner have a fundamental disagreement as to the applicability of the cited references to the presently pending claims, and as to the appropriateness of the rejections set forth. For at least the reasons fully set forth in the Appeal Brief, Applicants respectfully request that the Board overturn the Examiner's rejections.

Respectfully submitted,

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